No. 1064

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, AN ILLINOIS CORPORATION,
Appellant,

vs.

MORVIN DUEL, COMMISSIONER OF INSURANCE OF THE STATE OF WISCONSIN,
(Case No. 3) *Appellee.*

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, AN ILLINOIS CORPORATION,
Appellant,

vs.

MORVIN DUEL, COMMISSIONER OF INSURANCE OF THE STATE OF WISCONSIN,
(Case No. 4) *Appellee.*

MOTION AND SUPPLEMENTAL BRIEF OF APPELLANT IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS OR AFFIRM.

R. M. RIESER,
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MOTION OF APPELLANT FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS OR AFFIRM.

Now comes the appellant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois corporation, and moves this Honorable Court for leave to file a supplemental brief in opposition to motion of appellee to dismiss or affirm (a copy of this brief together with a copy of this

motion having been served on appellee), for the reason that since the service by appellant on May 3, 1944, of its statement of jurisdiction and its statement of points to be relied upon in this appeal, and since the decision of this Court in *United States* v. *Southeastern Underwriters Association*, 322 U. S. ....; 88 L. Ed. (Ad. Op.) 1082, a new ground of constitutional objection to the action of the State of Wisconsin herein has arisen, all of which is more fully set forth in the accompanying brief.

Respectfully submitted,

R. M. Rieser,
Herbert H. Naujoks,
Barnabas F. Sears,

Counsel for Appellant,
State Farm Mutual Automobile
Insurance Company.

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SUPPLEMENTAL BRIEF OF APPELLANT IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS OR AFFIRM.

Since the service by appellant on May 3, 1944, of its statement of jurisdiction and its points to be relied upon, this Court has held that factually modern insurance business, as usually conducted, is commerce; and where it is conducted across state lines, it is in fact interstate com-

merce (*United States* v. *Southeastern Underwriters Association*, 322 U.S. ....; 88 L. Ed. (Ad. Op.) 1082). Believing that this decision adds a new issue to this appeal, we have asked leave to file this supplemental brief in opposition to appellee's motion to dismiss or affirm, pointing out herein the constitutional aspects of this new issue from a strictly jurisdictional viewpoint.

That case holding that "the business of insurance is commerce", we submit, further invalidates the decision of the Wisconsin Supreme Court when viewed in a constitutional light. At the time this appeal was taken to this Court, the law of the case required that whether the decision of the Wisconsin Court constituted an unconstitutional attempt by Wisconsin to regulate appellant be viewed in the light of due process, full faith and credit or impairment of the obligation of contracts (Orig. Br. 12). Now, for the first time, the subject must be viewed in the additional light of interstate commerce, which we here present at our earliest opportunity (*Brickerhoff-Faris Co.* v. *Hill*, 281 U.S. 673, 678).

Appellant is the largest writer of automobile insurance in the world. As of December 31, 1942, it had total admitted assets of $29,632,845.46. Its total liabilities as of that date, including a voluntary and unassigned contingent reserve of $4,000,000.00, were $20,637,863.07. As of that date, its net free surplus available for any contingency was $8,994,982.39. Its income from policyholders for 1942 on business transacted in forty states amounted to $25,645,992.51, of which $1,630,206.39 represented membership fees collected in states which recognized them as such and not as premiums. The balance represents premiums as the term is legally understood in those states where the business is transacted. All of this business is written in the following manner: Appellant receives its applications for policies by mail at its home office in Illinois.

or at its branch office at Berkeley, California, executes its policies there, mailing them direct or to the agent for delivery to the policyholders. It renews all policies by billing the policyholder direct by mail at semi-annual intervals from its home office, and the policyholder remits by mail direct to the home office, or to its branch office. It issues no new policies thereafter so long as the policyholder owns the same car, but merely issues a renewal receipt as the premium for the succeeding semi-annual period or term of the policy is paid. Obviously this business in forty states and between those states factually is an important element of interstate commerce—a great national activity, insuring the public liability for personal injury and property damage and losses for fire, theft and collision of thousands of policyholders scattered over the states while their automobiles are operated by themselves, members or their families, or persons by permission of the assured for business or pleasure anywhere in the States or Canada. Many accidents occur while the policyholder is in a state other than that of his domicile.

We appreciate, of course, that "the primary test applied by this Court is not the mechanical one * * * but rather whether, *in each case*, the competing demands of the state and national interests involved can be accommodated" (Black, J., in *U.S. v. S.E.U.A.*, 88 L. Ed. 1082 at p. 1091 or "whether the matter is an appropriate one for local regulation and whether the regulation does not unduly burden interstate commerce." (Stone, C.J., *id.* p. 1110).

Applying this test, the Wisconsin decision requires appellant to post as a reserve to satisfy its liability for unearned premiums, in addition to that which all agree to be premiums, one-half of the sum it collects as a membership fee, regardless of where collected and notwithstanding that the states in which such membership fee is collected do not consider such membership fee as a part

of the premium and notwithstanding the complete absence of any liability on the part of appellant by law or contract in such state to return any part of such membership fees so collected, to any policyholder. In 1942, appellant collected the sum of $1,630,206.39 as membership fees. A reserve on this amount under the Wisconsin decision, would have to be car-marked or posted as a reserve for a non-existent liability and would be withdrawn absolutely from commerce. It could not be taken down for use in developing the commerce of the company, for paying unusual losses anywhere in the States, or other commercial exigencies. There it rests, immobile, a Mortmain, ever alert, however, to satisfy a liability that exists nowhere.

And this notwithstanding that the Wisconsin Court held that the Wisconsin Reserve for Unearned Premium Statute (Sec. 201.18) was not a statute designed to assure over-all solvency. (Orig. Br. 8). And this notwithstanding the further fact that appellant does not operate on the membership fee plan in Wisconsin, but posts 50% of all premiums from Wisconsin as the term is defined by the Wisconsin Court as a reserve for its unearned premium liability in Wisconsin. And this in a case where no one claims that appellant does not conform to the Capital and Surplus Statutes of Wisconsin, being the ones designed to assure over-all solvency, and no question is or can be raised as to appellant's solvency. (Orig. Br. 9). And this in a case where no legitimate local interest is present. (Orig. Br. 11, 12).

This illustrates the jurisdictional question involved. We appreciate fully the admonition of this Court in the *S.E.U.A.* case that "the precise boundary between national and state power over commerce has never yet been and doubtless never can be delineated by a single abstract definition." (Black, J. *id.* p. 1092). We, therefore, submit that the determination of whether the competing demands of

the state and national interests involved can be accommodated, whether the matter is an appropriate one for local regulation and whether the regulation does not unduly burden interstate commerce requires "a consideration of all the relevant facts and circumstances * * * which can only be made upon a case to case basis". (Stone, C.J. *id.* p. 1110).

CONCLUSION.

We again respectfully submit that this Court should exercise its jurisdiction herein.

Respectfully submitted,

R. M. Rieser,
Herbert H. Naujoks,
Barnabas F. Sears,
Counsel for Appellant,
State Farm Mutual Automobile
Insurance Company.